

**Superfund Subcommittee
National Advisory Council for Environmental Policy and Technology
Charge**

REVISED 6-19-02 Following Subcommittee Discussion on 6-18-02

BACKGROUND:

In July 2001, the Deputy Administrator directed the development of an action plan to address the recommendations in the Resources for the Future (RFF) report to Congress, *Superfund's Future, What Will It Cost?* Specifically, the plan called for the creation of a Superfund Subcommittee under the auspices of the Agency's National Advisory Council for Environmental Policy and Technology (NACEPT).

In the fall of 2001, the Agency enlarged the Superfund Subcommittee's scope to reflect consideration of the Superfund program in context with other federal and state waste cleanup programs. This broader focus will consider how the Nation's waste programs can work together in a more effective and unified fashion, so that citizens can be assured that federal, state, tribal and local governments are working optimally to make sites safe for their intended uses.

STATEMENT OF TASK:

The overall intent of this effort is to assist in identifying the future direction of the Superfund program in the context of other federal and state waste and site cleanup programs. Specifically, the Superfund Subcommittee will review the relevant documentation and, to the extent possible, provide answers to the questions that are attached and that relate to: a) the role of the NPL, b) mega sites, and c) measuring program performance.

During the period of Subcommittee activity, additional issues may arise for which the Agency will seek Subcommittee input. If this occurs, EPA will identify specific issues or questions for which advice is sought and provide appropriate documentation.

LEVEL OF EFFORT:

1. The Agency shall furnish the necessary personnel, material, reports, background documents and facilities needed for the Subcommittee activities.
2. It is expected that the Subcommittee activities will be accomplished by a series of meetings over about an 18 month period.
3. It is anticipated that one or a series of consensus reports will result. However, where consensus cannot be reached, a written discussion of the different opinions of Subcommittee members is to be provided.
4. The scope of the Subcommittee, as identified in the Statement of Task, will not change without agreement of both the Subcommittee and the Agency.
5. For additional issues for which the Agency will seek Subcommittee input, it is understood that these issues would not replace the main focus of the Subcommittee as identified in the Statement of Task. For these additional issues, the Subcommittee response may be in the form of a "consultation," i.e., dialogue, rather than a formal written report.
6. The Subcommittee may, at its discretion, make use of separate working groups to address specific issues. The Agency will support the activities of these working groups in the same manner as will be provided for the Subcommittee itself.
7. The Subcommittee will operate as and be subject to the requirements of a FACA Committee.

ROLE OF THE NPL

The process to place sites on the NPL has become increasingly contentious since the Superfund program's inception. Some stakeholders support the notion that the NPL is most appropriately a "tool of last resort." Others believe the current process inappropriately emphasizes keeping sites off the list. Perceptions aside, sites placed on the NPL are typically those with either recalcitrant or no potentially responsible parties (PRPs), those where States lack funds to perform cleanup, those considered Federal facilities, or where tribal, trustee, or affected community pressure is applied. Other cleanup avenues include the Resource Conservation and Recovery Act (RCRA) program, the relatively new Brownfields program, Federal agency response programs, Leaking Underground Storage Tank Program, State deferral or voluntary cleanup programs, and EPA's use of so-called "NPL-equivalent" cleanups and large-scale removals.

Among the issues that will be addressed are the following:

1. What should the role of the NPL be in addressing waste cleanup and what does it mean to be placed on the NPL?
 - a. What should be the relationship between the NPL and other cleanup programs?
 - b. How to best ensure an adequate level of cleanup?
 - c. How to integrate the NPL with other programs/statutes (NRD, CWA, Brownfields, etc.)?
 - d. Should the NPL be a "tool of last resort?" In particular, what is the appropriate role of non-NPL cleanups and States in addressing sites?
 - e. What are the impacts/implications of placement on the NPL (funding, community, etc.)?
 - f. How can EJ concerns be more effectively integrated into the implementation of the NPL (e.g. synergistic and cumulative impacts)?
 - g. What is the appropriate use of the NPL in the context of mega sites (e.g. river basins)?
 - h. What are the issues associated with the goals of remediation and economic redevelopment?
2. Who should be involved in determining what sites are listed (e.g., states, tribes, and communities)?
 - a. What should the nature of their involvement be?
 - b. Should their role differ depending on the site type or risk?
 - c. What is the role of local authorities?
 - d. What is the role of communities (in listing, risk assessment methodology, etc.)?
 - e. How can the role of ATSDR (or equivalent) be integrated at non-NPL sites?
3. What kinds of sites belong on the NPL?
 - a. Should the NPL be used for a more limited range of sites?
 - b. How can Tribal sites be addressed more effectively through the NPL? (How can cultural and subsistence-living factors be integrated more effectively?)
 - c. What is the role of Risk (ecological, human health) in determining which sites should be on the NPL?
 - d. What are the technical criteria for listing a site?
 - e. What should the interaction be between the removal and the remedial programs?
 - f. What are the broader issues of NPL listing (stigma, etc.)?

Information Needs

1. Assess the relative costs of using other cleanup programs as alternatives to the NPL.
2. Determine whether EPA has used the citizen petition process to add sites to the NPL. If so, how?
3. Identify the other remedial/cleanup alternatives and their obligations/requirements (RCRA ToSCA, state standards, etc.).
4. Identify other funding sources (non-EPA public sources, private funding).
5. Assess the issues behind "recalcitrant parties".
6. Understand EPA guidance on the listing process.

7. Assess the characteristics of other cleanup programs that have made them more or less successful than the NPL. What kind of sites were involved (cost complexity etc.)?
8. Gain a better understanding of the HRS and the application of the “magic number.”
9. Assess community acceptance of NPL listing vs. voluntary cleanups.
10. Determine what types of sites are typically listed on the NPL. (Is it true that “sites placed on the NPL are typically those with either recalcitrant or no potentially responsible parties (PRPs), those where States lack funds to perform cleanup, those considered Federal facilities, or where tribal, trustee, or affected community pressure is applied?)
11. Assess the use of 106 Orders (and funding to implement).

MEGA SITES

The RFF Superfund cost study defined mega sites to be those NPL sites where cleanup costs (i.e., total removal and remedial action costs) exceed \$50 million. Mining and contaminated sediment sites are often considered synonymous with mega sites, although the majority of mining and sediment sites are not mega sites, and vice versa. RFF indicated that cleanup costs for mega sites are among the major variables driving future program costs. Mega site cleanups, especially those tied to mining and contaminated sediments, are also often difficult and time consuming.

Among the issues that will be addressed are the following:

1. Should costs be the determining factor when designating sites as mega sites or should other factors such as complexity or geographic size be considered?
2. What are the reasonable policy options for addressing mega sites?
 - a. Are there viable alternatives to placing mega sites on the NPL and/or ways of containing their costs (for example, listing only the highest priority portions of the sites)?
3. What are the unique aspects of mega sites that might require a different decision making process for NPL listing?
 - a. Large geographical distribution (e.g. river basins)
 - b. Slow rate of progress
 - c. Risk management challenges
 - d. Factors specifically relevant to Federal Facilities
4. How to integrate long-term stewardship in the cleanup/management of mega sites?

Information Needs

1. Confirm the characteristics that drive the costs of mega sites (quantity of material, etc.).
2. Confirm the list of all sites defined as “mega sites.”
3. Bring in outside experts to help frame the discussion around issues where the committee may be missing expertise.
4. Clarify the federal budgeting process and how mega sites are funded.
5. Summary of RFF study.
6. Clarify EPA’s position on liability/cleanup responsibility for state/private/other ownership.
7. Determine the impact of PRPs protecting their assets.

MEASURING PROGRAM PROGRESS

For approximately the last seven years of the Superfund program, construction completion has been the program’s key measure of progress for sites on the NPL. However, this milestone only reflects the final outcome of years of analysis, cleanup work, and effort at NPL sites. Construction completion neither measures nor characterizes the impacts of cleanup efforts on human health and the environment. Furthermore, construction completions do not correlate as milestones for non-NPL cleanups or with efforts at other hazardous waste cleanups. In the past few years, the Resource Conservation and Recovery Act (RCRA) program developed indicators to gauge the impact of

its efforts on human health and the environment. The Superfund program has capitalized on RCRA's efforts and conceptualized similar indicators for Superfund work. Nonetheless, there still are few cross-program metrics to capture comprehensive outcomes for interim work. This void impedes the Agency's ability to communicate work at hazardous waste sites to the public, Congress, States, and the regulated community. The Agency expects to share new measure proposals with the panel and will seek feedback from the Subcommittee on those proposed measures.

Among the issues that will be addressed are the following:

1. What criteria should be used to measure progress?
 - a. Should environmental indicators be established that are consistent among environmental programs?
 - b. Review the definition of construction completion and the relationship between that and "really being done."
 - c. Determine the role of public/community values in determining progress (e.g. cultural, social, subsistence lifestyles).
 - d. How to address and respond to remedy failures?
2. Who should be involved in measuring progress and defining success?
 - a. What is the role of communities and other parties?
3. What is the long-term effectiveness of institutional controls (particularly enforcement), containment and natural attenuation?
4. How to integrate long-term stewardship into the goals of the Program?
 - a. How to assure responsibility?
 - b. How to fund for long-term stewardship?

Information Needs

1. Clarify how the money is used and what you get for it.
2. Determine how communities feel about the program. Is there consensus about what communities identify as success and progress?
3. Assess the impacts/implications of economic redevelopment vs. remediation.
4. What are the timing assumptions for construction completion (speed of cleanup)?
5. What are the institutional controls available for monitoring and long-term stewardship?
6. What environmental indicators do other cleanup programs use?
7. What factors influence whether a resource is useable (cultural factors, factors influencing subsistence lifestyles etc.)?
8. Determine the steps for communities to assess their own measures of success.
9. Determine how to measure long-term treatment scenarios for those sites that do not reach construction completion.
10. Identify Congressional perspectives on success.